

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN WILLIAM HARPHAM,

Defendant.

NO. CR-11-0042-JLQ

**ORDER ON SEPTEMBER 2, 2011
HEARING**

A pretrial hearing was held in the above entitled matter on September 2, 2011. The Defendant was present along with this court appointed attorneys, Attorney Roger Peven, Kimberly Deater, and Kailey Moran. The Government was represented by Michael Ormsby, Joseph Harrington, Thomas Rice, and Chris Lomax. The following order is intended to memorialize and supplement the oral rulings of the court.

A. Government's Second Motion to Compel Discovery (ECF No. 92)

Government's Second Motion to Compel Discovery (ECF No. 92) is **DENIED** as **MOOT**. At the last pretrial conference, defense counsel attested that it has complied with its reciprocal discovery obligations.

B. Defendant's Motion for Supplemental Juror Questionnaire (ECF No. 153)

Defendant's Motion for Supplemental Juror Questionnaire (ECF No. 153) is **GRANTED** in part and **DENIED** in part. The court intends to utilize the supplemental juror questionnaire prepared by the court, rather than that proposed by the defense. Copies of the final questionnaire have been provided to counsel.

C. Defendant's Motion to Compel Discovery (ECF No. 173)

Defendant's Motion to Compel filed August 22, 2001 seeks additional discovery related to the Government's tool mark expert, the Bomb Arson Tracking System and U.S. Bomb Data Center, FBI agent McEuen, and the IED mock up performed by the Government.

At the hearing the court specifically considered that portion of the motion relating to the IED mock up. As to this part of the motion, the Motion to Compel is **GRANTED**, as set forth below. The remainder of the motion will be taken under advisement.

As a result of the Government's late production of the IED mock up evidence and the failure of the Government to include the defense in the test shots conducted by the FBI, the Government shall abide by the following instructions.

1. The Government shall make Agent Stryker available to respond to any questions the defense and/or the defense expert might have as to how the IED test shots were planned, designed, executed, and analyzed, and what conclusions Agent Stryker intends to draw based upon the test shots; and

2. At Mr. Taylor's request, the FBI shall forthwith re-construct three identical test IEDs and re-perform the tests conducted earlier with Mr. Taylor present.

3. At Mr. Taylor's request, the FBI shall construct up to three similar additional test IEDs constructed as Mr. Taylor directs. If Mr. Taylor requests the use of different components/materials than what the FBI used in constructing its test IEDs, then Mr. Taylor shall provide the FBI with such components/materials. Tests of these IEDs shall be performed (and likewise recorded) at Mr. Taylor's direction. Still or video recordings obtained shall be immediately produced, unedited, to the defense expert and counsel.

4. Additional IED testing shall be performed no later than **September 8, 2011**.

**D. Government's Motion in Limine for Relief from Order (ECF No. 188)
/Motion to Expedite Hearing (ECF No. 190)**

Government's Motion to Expedite (ECF No. 190) and Motion in Limine for Relief from Order (ECF No. 188) are **GRANTED**. A copy of the receipt shall be promptly

provided to the defense.

E. Defendant's Motion to Seal the filing of the Motion in Limine to Exclude IED Test Shots and Testimony of Lee McEuen (ECF No. 192)

Defendant's Motion to Seal (ECF No. 192) is **GRANTED**. The court will hear the Defendant's Motion in Limine on Friday, September 9, 2011 at 10:00 a.m.

F. Government's Motion to Expedite (ECF No. 181)/Motion for Video-Taped Deposition of Cecil Harpham (ECF No. 179)

The Govenrment's Motion to Expedite (ECF No. 181) is **GRANTED**. The Government's Motion (ECF No. 179) is taken under advisement. Counsel for the defense shall inquire with the family of the Defendant and counsel for Cecil Harpham as to Cecil Harpham's ability to testify at trial and/or by deposition, and report that information as soon as possible to the court.

IT IS SO ORDERED. The Clerk is hereby directed to enter this Order and furnish copies to counsel.

Dated September 2, 2011.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE